

**TESTIMONY OF  
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**BEFORE THE  
U.S. SENATE  
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**

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Chairman Stevens, Co-Chairman Inouye and Members of the Committee, thank you for the opportunity to appear before you this morning to discuss issues relating to the future of U.S. telecommunications law. As you determine the most appropriate ways to spur competition and innovation in the telecom sectors while simultaneously protecting consumers, I encourage you to take steps to further the positive impact that the wireless industry has had on the U.S. economy and on the level of competition for voice and data services. The wireless sector is repeatedly touted as the model of an industry that has flourished in a national deregulatory framework and it is becoming apparent that this Congress is attempting to deliver a similar national framework to other telecom sectors. Ironically, while Congress is working to increase competition and innovation for other sectors via a national framework, regulatory bodies at the state level are attempting to take wireless far back into the 20<sup>th</sup> Century by imposing disparate and burdensome state-by-state restrictions. The innovative national approach applied to the wireless industry in the 1993 Budget Act has proven its incredible value and is one which recognizes that the consumer is the best regulator.

### **The Consumer is the Best Regulator in a Competitive Market**

In 1993, Congress passed *The Omnibus Budget Reconciliation Act of 1993* (“OBRA 1993”), which added a new section 332(c) to the Communications Act preempting state rate and entry regulation. Congress recognized that pre-OBRA state regulations actually operated to slow down competition, delaying entry, and minimize or prevent carriers from developing new and innovative rate plans. Section 332(c)(3) preempted state and local rate and entry regulation of wireless carriers, but preserved state authority over undefined “other terms and conditions” of commercial mobile radio services. State commissions have asserted this “other terms and conditions” authority as the basis for an increasingly broad range of regulation.

State legislatures and commissions are increasingly introducing and passing an array of conflicting laws and regulations. Just last week, a bill was introduced in the Michigan Senate that requires a mandatory trial period extending well beyond the time the customer receives his first bill that limits early termination fees to \$20 and requires the Michigan Public Service Commission to establish service quality standards for wireless service. Simultaneously, the New York Assembly is currently considering a bill that would require its Consumer Protection Board to adopt a different set of new rules and regulations on wireless carriers requiring a different trial period. In addition, the New York Assembly is considering what written materials have to be provided to customers when, as well as at what time within a contract period, carriers can make changes to their rates. Surely, Congress did not

intend for Michigan wireless subscribers to have service under one set of rules while New Yorkers had service under a completely different set.

A review of the results of this ground-breaking deregulatory framework have been astounding and altogether unique as compared to other telecom sectors. In 1993, states were preempted from regulating entry. As a result, the wireless industry has gone from two wireless carriers per market to an average of five per market. States were preempted from regulating rates. Competition and market forces have caused the average price per minute to fall about 84%. There were 11 million wireless customers in the United States when OBRA was passed, now there are 219 million customers. These customers have the ability to pick among carriers for better service quality, different plans and unique offerings. The lightly regulated wireless industry has invested \$187.8 billion in capital expenditure since the OBRA was passed – not including the billion of dollars spent purchasing spectrum. Where once a limited number of people had an expensive voice only option, consumers now have access to voice, text messages, office systems, e-mail access, mobile television, web access, games and other entertainment options.

Opponents to the continued national, light-touch regulation Congress put in place in 1993 claim they are trying to protect wireless consumers. Here is the pivotal question you need to be asking --- protect wireless consumers from what? Lower prices? More providers to choose from? More choices among rate plans? Innovative new devices with features like camera phones or that are sleekly designed? Multiple billing options, from rollover minutes to text message billing? Clarity on bills about what the charges are for? Cheaper devices?

Let me be clear, the wireless industry supports consumer protection: protections against confusion about what consumers can expect from their provider and how their service operates; protection from a decline in the variety of services and devices they can choose from; protection from the reduction in their ability to obtain the exact device and service plan they want; and the lack of ability to receive the best services and devices.

State-by-state, wireless specific laws and regulations over issues such as the size of the font of marketing materials and how long of a trial period consumers have to test their phone undermine the national, deregulatory framework Congress instituted in 1993 and that produced the enormous consumer benefits I outlined earlier. I respectfully ask you again – what is the problem more laws and regulations would solve for the wireless consumer? We often hear that state-by-state laws and regulations are necessary so that wireless consumers have somewhere to go close to home to have their concerns addressed. We agree that wireless consumers need recourse to address whatever issues they have. And they do! State attorneys general have and will continue to have authority to prosecute fraudulent business practices – and they exercise their authority.

There are many forums for wireless consumers to address and resolve their concerns at both the state and federal levels. The FCC's tracking of quarterly complaints shows that wireless complaints have fallen 37 percent over the last year and now stand at 22 complaints per million wireless customers – that's an incredibly low complaint ratio that continues to improve as carriers expend significant resources to address consumer issues. But what about those wireless consumer concerns. The

wireless industry does not turn a deaf ear to them. It is the foundation of our business model to attract and *keep* customers. Some industry critics would have you believe that we actually try to annoy our customers and drive them away. Nothing could be further from the truth. Wireless companies take customer service very seriously spending millions of dollars a year on training personnel and upgrading their call center capabilities.

Wireless carriers are also spending millions of dollars a year on behalf of wireless consumers by opposing excessive and discriminatory taxes imposed by state and local governments. Wireless consumers are bearing the brunt of budget shortfalls as cities and localities view the telecom consumer as the golden goose for revenue enhancement. Ironically, some of the states that are the most aggressive in pushing for regulation on wireless carriers in the name of the consumer, are also the states with the highest rates of taxes and fees on their constituents.

As we enter our third decade, the wireless industry is poised to enter a Wireless Renaissance, bringing advanced services like wireless Internet, to more than 200 million mobile Americans. We are at a critical juncture in our evolution and need your leadership to make this Renaissance a reality for consumers at prices they can afford. Shoring up the national, deregulatory framework you created in 1993 is the best way to empower consumers and protect their rights and access to innovative, convenient and affordable wireless devices and services. How to do this? Reaffirm the national framework for wireless carrier practices and allow the FCC to regulate only in instances necessary for public health and safety or demonstrated market failure.

## **Wireless Perspective on Regulating the Internet**

Recently, a concept called “Net Neutrality” has generated intense debate within the context of broader reforms of our telecommunications laws. The issues are complex and confusing. It appears the only thing everyone agrees on is that no one can agree on what Net Neutrality means. The wireless industry has seen zero evidence that there is a problem that needs to be or would be solved through the variety of Net Neutrality legislative proposals currently circulating. The industry agrees with FCC Chairman Martin that the Commission already has the jurisdiction and ability to address any problems in this area and urges you to carefully consider the unintended, negative consequences that could befall the U.S. wireless consumer if anticipatory regulations are enacted. The Internet, like the wireless industry, has never stopped growing and evolving. There is no reason to restrict the growth or evolution of either, unless or until a real marketplace failure is identified.

In particular, the wireless industry is quite concerned that many of the unintended consequences that would flow from some of the Net Neutrality regulations being considered would have a particularly negative impact on wireless consumers. The industry is also troubled that the proposed Net Neutrality regulations being contemplated will discourage investment the industry needs to continue building the infrastructure, design the devices and operate the evolving networks needed to make a Wireless Renaissance a reality and sustain consumer demand for more advanced mobile services. CTIA believes the Internet has derived its strength and contributed to the economy by virtue of its freedom from regulation and therefore believes the net neutrality provisions of the Communications, Consumer’s Choice,

and Broadband Deployment Act of 2006, which calls for a review of the current system, in lieu of regulation, is the appropriate approach to take.

### **Universal Service Reform for the Wireless Consumer**

Let me turn now to the urgent need for universal service reform. Over the last decade, wireless industry contributions to universal service have been steadily rising, while universal service distributions remain primarily directed to wireline carriers. Wireless carriers and their customers are responsible for about one-third of contributions to universal service. The wireless industry's payment into the federal universal service programs will likely exceed \$2.5 billion this year. Meanwhile, the vast majority of universal service subsidies are directed to our competitors -- wireline carriers. Wireless carriers receive only about 13% of universal service support overall and less than 20% of high-cost universal service support. Since 1997, of the \$22 billion spent on high-cost universal service subsidies, \$20.9 billion has gone to incumbent LECs and only \$1.1 billion has gone to wireless carriers. This inequity exists even as consumers -- the only intended beneficiaries of universal service -- are demanding more and more wireless services. In fact, there are now more mobile wireless subscribers than wireline switched access lines.

The wireless industry shares Congress's commitment to the goals of universal service and its concerns about growth in the size of the universal service fund.

Wireless carriers are committed to the efficient deployment of networks in rural America and universal service can play an important part in making that happen. Because of our net payer position, the wireless industry has strong incentives to ensure that universal service contributions are collected from as wide a base of

contributors as possible, while ensuring that both incumbent and competitive eligible telecommunications carriers (ETCs) receive no more support than is necessary to achieve the goals of universal service. On the contribution side, CTIA supports adoption of a numbers- or connections-based contribution methodology. On the distribution side, CTIA supports market-driven reforms to curb demand for universal service subsidies. The current universal service system does not reflect current market realities. It favors incumbent wireline networks and that does not help consumers. Consumers never benefit from regulations that distort the competitive market. In contrast to the current universal service mechanisms, CTIA's reform proposals would demand accountability and results from all fund recipients and would encourage and reward efficiency. Under CTIA's proposals, both incumbents and competitors would receive less support.

As this Committee works to update our nation's telecommunications laws, please consider the tremendous positive impact that the wireless industry has had on the ability of consumers to communicate, on the U.S. economy, and on the competitive landscape.